

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

WP(C).No. 24484 of 2007(M)

PETITIONER:

**P. KUTTIAPPU MENOKI, AGED 63 YEARS,
S/O. ACHUTHAN NAIR (LATE) 'VRINDAVAN',
DOWN HILL, MALAPPURAM,(RETIRED SENIOR
SUPERINTENDENT).**

BY ADV. SRI.BABU S. NAIR

RESPONDENTS:

**1. THE KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY,
VYDHUTHI BHAVAN,, TRIVANDRUM.**

**2. THE CHIEF ENGINEER,K.S.E.B,
(ADMINISTRATION),PATTAM, TRIVANDRUM.**

**3. THE DEPUTY CHIEF ENGINEER,
ELECTRICAL CIRCLE, K.S.E.B
MANJERI, MALAPPURAM DISTRICT.**

**4. THE DEPUTY TAHSILDAR (R.R)
ERNAD TALUK, MALAPPURAM DISTRICT.**

**BY ADV. SRI. ASOK M.CHERIYAN, SC, KSEB
GOVERNMENT PLEADER SRI. MATHEW GEORGE VADAKKEL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10/12/2007,THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

WP(C) NO: 24484/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE SHOW CAUSE NOTICE TO THE PETITIONER BY THE R3 DT. 13/10/2004.

EXT.P2. COPY OF THE REPLY SUBMITTED BY THE PETITIONER DT. 25/10/2004 TO EXHIBIT P1 SHOW CAUSE NOTICE.

EXT.P3. COPY OF THE REVENUE RECOVERY NOTICE ISSUED TO THE PETITIONER BY THE R4 DT. 19/09/2006.

EXT.P4. COPY OF THE ORDER OF THE R3 AS ORDER NO. EB1/37/03/202 DT. 18/1/2005.

EXT.P5. COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE R2 DT. 7/10/2006.

EXT.P6. COPY OF THE JUDGMENT DT. 7/3/07 IN WPC NO. 26726/2006 OF THIS COURT.

EXT.P7. COPY OF THE ORDER OF THE R2 DT. 14/6/2007 AS NO. EBVS7/20/2005/416, REJECTING THE EXT.P5 APPEAL PETITION FILED BY THE PETITIONER.

RESPONDENT'S EXHIBITS

EXT.R1A. COPY OF THE LETTER DT. 28/2/2000.

EXT.R1B. COPY OF THE NOTICE DT. 14/10/2001.

EXT.R1C. COPY OF THE ORDER DT. 21/10/2002.

EXT.R1D. COPY OF THE REGISTERED LETTER SENT TO THE PETITIONER AND REFUSED ON 29/10/2002.

EXT.R1E. COPY OF THE SHOW CAUSE NOTICE DT. 18/10/2003.

EXT.R1F. COPY OF THE REPLY DT. 22/1/2004 BY THE PETITIONER.

EXT.R1G. COPY OF THE COVER OF THE REGISTERED LETTER SENT TO THE PETITIONER AND REFUSED ON 22/1/2005.

True copy

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V.GIRI, J.

W.P.(C).No.24484 of 2007 M

Dated this the 10th day of December, 2007.

JUDGMENT

The petitioner was a Senior Superintendent in the Electricity Board. He retired on 31.5.2000. On 18.12.1999, while working as the Senior Superintendent, an amount of Rs.1,34,222/- was entrusted to a lady office attendant to be deposited in the bank. Apparently, on her way to State Bank of Travancore, Malappuram, one bundle of currency, amounting to Rs.43,292/- was lost. A crime was registered alleging an offence under Section 379 of the Indian Penal Code.

2. As stated above, the petitioner retired from service on 31.5.2000. His pensionary benefits were paid to him. By Ext.R1(c) communication dated 21.10.2002, the Executive Engineer, who conducted an enquiry in this regard, came to the conclusion that the petitioner, the Senior Superintendent, had miserably failed in arranging proper remittance through competent officials. Thereafter Ext.R1(e) show

:: 2 ::

cause notice was issued requiring the petitioner to show cause why an amount of Rs.43,292/- should not be recovered from him, being the loss sustained by the Electricity Board. Petitioner submitted Ext.R1(f) objections. It seems that, thereafter, another show cause notice Ext.P1 was issued requiring the petitioner to show cause why an amount of Rs.34,634/- should not be realised from him. According to the petitioner, he has submitted his objections as per Ext.P2. But Ext.P4 order was passed by the Chief Engineer confirming the proposal for recovery of an amount of Rs.34,634/- from the petitioner. The petitioner filed Ext.P5 appeal and the same was dismissed under Ext.P7 order. Thereafter, revenue recovery proceedings have been initiated against him. Ext.P7 is under challenge in this writ petition.

3. It seems that the liability, as such, now sought to be recovered from the petitioner was fixed only under Ext.P4 dated 18.1.2005. This is obviously beyond 3 years from the date on which the petitioner retired from service. The character of the liability is apparently payment of the damages suffered by the Electricity Board. In other words, the Electricity Board decided that the petitioner has occasioned a loss to the

::3::

board on account of his negligence and is therefore liable to recompense the board. The Board is entitled to proceed against a former employee for recompensing itself of the loss caused by the said former employee. But, that cannot be done merely by resorting to revenue recovery proceedings. Exts.P3 and P7 could only be treated as a decision taken by the Board quantifying the loss, which according to it, was caused on account of the negligence on the part of the petitioner. But, if the Board wants to recover any amount from the petitioner, then it has to establish such loss before a Civil Court. The amount sought to be recovered under Exts.P6 and P7 are not statutory in character. They are in the nature of damages. Therefore, the right to recover the same and the quantification of the damages will have to be established by the person, who allegedly suffered the damage viz., Electricity Board.

4. The writ petition is disposed of making it clear that if the Board seeks to recover any amount on the basis of Exts.P3 and P7, then the Board will have to establish its right to recover the same, in a properly instituted civil proceedings before a competent Civil Court, with the petitioner on the party array. The

right of the Electricity Board in this regard is left in tact.

5. The Electricity Board has a further contention that it is entitled to initiate proceedings under the Public Accountants Act, inasmuch as, the petitioner is a public accountant within the meaning of Section 2(a) of the Public Accountants Act. It is made clear that if proceedings are initiated under the Act for recovery of any amount, then it is open to the petitioner to object to the amount in whole or any part thereof, under Section 3(3) of the Act.

Subject to the above observation, this writ petition is disposed of.

Sd/-
(V.GIRI)
JUDGE

sk/

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